



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AG/F77/2022/0228**

Property : **1 Johnson House Adelaide Road
London Nw3 3PS**

Tenant : **Mr Bryan Haynes**

Landlord : **Allan International Metals**

Date of Objection : **28 September 2022**

Type of Application : **Section 70, Rent Act 1977**

Tribunal : **Judge Pittaway
Ms M Krisko FRICS**

Date of Reasons : **22 February 2023**

DECISION

The sum of £884.00 per calendar month will be registered as the fair rent with effect from 13 December 2022, being the date the Tribunal made the Decision.

REASONS

Background

1. On 12 July 2022 the Landlord applied to the Rent Officer for registration of a fair rent of £450 per calendar month for 1 Johnson House, Adelaide Road London Nw3 3PS (the subject property).
2. On 5 September 2022 the Rent Officer registered a fair rent of £1225 per calendar month with effect from 5 September 2022. This rent appears to have been the rent determined under section 70 of the Rent Act 1977. The rent had not been previously registered.
3. By an email dated 28 September 2022 the tenant objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal.
4. The Tribunal issued Directions on 26 October 2022 setting out the timetable and the steps the parties were required to take in preparation for the determination of this case. These stated that the Tribunal would seek to decide the Fair Rent for the property based on written submissions from the parties unless either party requested a hearing. Neither did.

The Law

5. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977 (the Act), had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
6. In *SpathHolme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [1999] QB 92 the Court of Appeal emphasised
 - (a) that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms - other than as to rent - to that of the regulated tenancy) and
 - (b) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).
7. The Rent Acts (Maximum Fair Rent) Order 1999 (the 1999 Order) provides the framework that places a ceiling on the maximum rent that can be registered. By Article 2(6) of the 1999 Order the 1999 Order only applies to

applications where on the date of the application there is an existing registered rent .

Submissions

Tenant's Submissions

9. There were no written submissions from the Tenant

Landlords' Submissions

10. The Tribunal received a written statement from Mr Justin Bennett FRICS of LBB Chartered Surveyors, appointed by the Landlord, dated 8 November 2022. He had not been provided access to the flat and relied upon particulars from the sales particulars from 2013 and the rent register. He submitted that a fair rent will be between 30% and 40% below an open market rent.

11. Mr Bennett was unable to find direct comparable evidence for the subject property but considered 10 lettings of one bedroom flats in the area (of differing sizes) on an Assured Shorthold Tenancy basis over a period of 12 months, adjusting for floor level, outside space and parking, access to communal areas and time. He then calculated an average calendar month rent per square foot. Mr Bennet adopted an adjusted per calendar month average of £4.03/ft² which he applied to the subject property on the basis of its square footage being 514, resulting in a rent per calendar month of £2,069.18, which he discounted by 35% for scarcity and repairs, submitting that the fair rent should be £1,344.97 per calendar month.

Inspection

12. The Tribunal did not inspect the property but relied upon the Inspection Report prepared by Zahra Golestani-Zadeh, the Rent Officer, who inspected the property on 25 August 2022. The report states that the property is a purpose built ground floor flat comprising a hallway, kitchen, shower/WC, bedroom and living room. The house is on a residential street about a ten minute walk to Chalk Farm station and local shops. There are radiators in the hallway, bedroom and living room. There is no entryphone. The flat is described as being decorated to a satisfactory state by the tenant and that the common parts are in satisfactory repair and decoration.

Determination and Valuation

13. The Tribunal initially needs to determine what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. In doing this, the Tribunal will consider the rental value of the property and not the personal circumstances of the Tenant, as that is not a factor envisaged by the Act.

14. The Tribunal note that the subject property is described as being on an estate of similar properties. The Tribunal has reached its decision on the basis of the comparables, not calculating the fair rent on an extrapolated rent per square foot. The comparables provided ranged from £1,100 to £1700 per calendar month, with the higher rents being paid for properties that are not on estates. The Tribunal determines, on the evidence before it and its general knowledge, that a full market rent for the subject property would be £1,300 per calendar month.

15. The Tribunal accepted the Rent Officer's deduction of 15% for the state of repair of the subject property.

16. The next aspect to be considered is the issue of scarcity. The Tribunal was not provided with any specific evidence on this issue. However, the issue of scarcity is considered on the basis of the number of properties available to let and also considering the demand for such properties and over a really large area. Neither party provided any specific evidence in respect of scarcity. Therefore, using our knowledge and experience we consider that in the wide geographical area of Greater London there is an imbalance between supply and demand and this impacts upon rental values. Accordingly, we make a deduction for scarcity of approximately 20%. The full valuation is shown below.

Market Rent		£/month 1,300
<i>Less</i>		
Disrepair		<u>195</u> 1,105
<i>Less</i>		
Scarcity	approx. 20%	<u>221</u> £884

Decision

17. The uncapped fair rent determined by the Tribunal, for the purposes of section 70, is £884 per week.

18. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 in relation to capped rent do not apply to the subject property as this is the first registration of the fair rent.

19. Accordingly, the sum of £884.00 per calendar month will be registered as the fair rent with effect from 13 December 2022 being the date of the Tribunal's decision.

20. The Landlord cannot charge more than the registered fair rent but it is open to the landlord to charge less and the Tribunal notes that the Landlord was seeking a rent of £450 per calendar month when it applied to the rent officer.

Chairman: Judge Pittaway

Date: 22 February 2023

APPEAL PROVISIONS

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).